



October 22, 2013

**Before the  
FEDERAL COMMUNICATION COMMISSION  
Washington, D.C. 20554**

In the Matter of )  
 )  
Modernizing the E-Rate ) WC Docket No. 13-184  
Program for Schools and Libraries )

**COMMENTS OF THE ASSOCIATION OF TRIBAL ARCHIVES, LIBRARIES, AND MUSEUMS**

Pursuant to Sections 1.415 and 1.419 of the Federal Communications Commission's rules, the Association of Tribal Archives, Libraries, and Museums respectfully submits these Comments in the above-referenced proceeding in response to Notice of Proposed Rulemaking issued July 23, 2013.

ATALM appreciates that the commission is reviewing the regulations that govern Schools and Libraries E-rate programs. E-rate programs have been effective in helping public libraries provide patrons with high-capacity broadband access, but have not been effective in helping tribal libraries. To be effective in tribal communities, E-rate regulations must be modified to take into account the unique needs of Indian Country in general and tribal libraries in particular.

Comments herein are limited to the barriers that prevent tribal libraries from accessing the E-rate program and do not address the issues of bandwidth, connectivity, or deployment. Until tribal libraries have the same access to E-rate as public libraries, these are moot issues.

***SUMMARY: While more than 51% of public libraries access E-rate programs, less than 5% of tribal libraries do so. Three primary factors influence this disparity: 1) Most tribal libraries are not eligible to participate because, as now required by the FCC, they are not legally eligible for Library Services and Technology Act (LSTA) assistance from the state in which their tribal lands are located; 2) The FCC requires state library agencies to approve tribal library technology plans, a service for which most are not allowed by state law to provide; and 3) Tribal libraries are not aware of E-Rate programs and need training in developing technology plans, providing digital literacy services, and complying with E-rate regulations.***

**1. About the Association of Tribal Archives, Libraries, and Museums**

The Association of Tribal Archives, Libraries, and Museums (ATALM) is a non-profit organization that provides culturally relevant training and services to indigenous archives, libraries, and museums. With support from the Institute of Museum and Library Services (IMLS), a federal agency, ATALM conducts periodic surveys of tribal cultural institutions to assess needs and develop effective and efficient programs. It is a primarily Native-led organization founded in 2010.

## 2. E-Rate and Tribal Libraries

While the digital divide is narrowing for most minority populations, there continues to be a huge gap for many of the nation's 5.2 million indigenous peoples, especially those residing on tribal lands. The Federal Communications Commission (FCC) estimates that ninety percent of tribal populations lack high-speed Internet access, with usage rates as low as five percent in some areas.<sup>1</sup>

Recent advances are improving broadband access for some indigenous populations, but there remains an unmet need to provide access to free public computers and high-speed broadband services. In most non-tribal communities, these needs are met by public libraries. It is logical that tribal libraries should provide the same level of access as public libraries, yet very few have access to the School & Libraries Universal Service Support Program (E-rate) that enables public libraries to provide high-quality access to modern communications networks.

Because of eligibility requirements and a lack of awareness, E-rate has had little impact on tribal libraries, as evidenced by a 2011 study funded by the Institute of Museum and Library Services and conducted by the Association of Tribal Archives, Libraries, and Museums (ATALM). The study found that while 46% of tribal libraries are the only source of free public internet access in their communities, less than 5% of tribal libraries benefit from the E-rate program. This compares to 51% of public libraries.<sup>2 3</sup>

Tribal libraries cited the following reasons for not accessing E-rate:

- 52% of responding tribal libraries did not know about E-rate
- 42% were unsure if their library is eligible for E-rate
- 11% indicated the application process is too complicated
- 6% felt the time need to participate in the program was not warranted
- 1.4% participated in the E-rate program but have discontinued participation
- 1.4% were denied funding

With continued funding from the Institute of Museum and Library Services, ATALM is now studying the current state of technology infrastructure in tribal libraries. A report that identifies and describes the challenges and barriers to technology faced by tribal libraries and their patrons, as well as proposed solutions, will be released in March 2014.

As closely as possible, the surveys replicate recent national surveys that excluded tribal libraries and indigenous populations, an oversight that should be unacceptable to those who truly care about digital inclusion for all Americans.

The ATALM study will specifically address:

- How tribal libraries ***are serving*** the technology needs of their service populations

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<sup>1</sup> Horrigan, J.B. 2010. *Broadband Adoption and Use in America*. Federal Communications Commission. Available at [www.fcc.gov](http://www.fcc.gov)

<sup>2</sup> Statement of FCC Chairman William E. Kennard on Urban Institute's E-Rate Evaluation (2000) <http://transition.fcc.gov/Speeches/Kennard/Statements/2000/stewk072.html>

<sup>3</sup> U.S. Government Accountability Office report

- What tribal libraries need to improve digital inclusion services
- How Indian Country residents actually **access** and **use** the Internet and computer technology
- How they **would like to use** computer technology and the Internet, and how their tribal libraries can help meet those needs (with infrastructure, hardware, software, bandwidth, etc.)
- What **additional adoption needs** Indian Country residents have, and how libraries can serve those needs
- What the **gaps in library infrastructure, service, and training** may prevent Indian Country residents from gaining the same quality of life benefits from digital inclusion that American citizens in the mainstream achieve

Once the study is completed, ATALM will have the knowledge necessary to comment with assurance on the issues posed in the FCC's Notice of Proposed Rulemaking. In the interim, ATALM is submitting these comments based on its existing body of knowledge.

### 3. Background of Tribal Libraries

The first tribal library was developed by the Colorado River Tribal Council in Arizona in 1958, with subsequent libraries created in the Southwest, New York State and Idaho during the 1960s.<sup>4</sup> In 1984, the "Library Services for Indian Tribes and Hawaiian Natives Program" was added as Title IV to the Library Services and Construction Act administered by the Institute of Museum and Library Services (IMLS), a federal agency. Title IV was intended to "(1) promote the extension of public library services to Indian people living on or near reservations; (2) provide incentives for the establishment and expansion of tribal library programs; and (3) improve the administration and implementation of library services for Indians by providing funds to establish and support ongoing library programs."

Title IV provides annual grants of up to \$7,000 for one tribal library per tribal nation, when the library is authorized by tribal authorities as the designated tribal library. The program also provides larger competitive grants for special projects. This funding has enabled more than 318 tribal nations to establish libraries and has ensured that the majority of tribal populations have access to culturally appropriate information services. It should be noted many tribal communities without the benefit of a tribal library are in various stages of developing facilities. ATALM predicts that by 2020, most federally recognized tribes will have access to culturally specific libraries.

It is important to understand the unique nature of tribal libraries and how they differ from public libraries. While tribal libraries provide many of the same services typically associated with public libraries, because they are located on tribal lands, they often are not eligible for the same services and funding afforded public libraries. They also do not receive support from local tax bases and do not have connections or receive services from state library agencies.

From a cultural perspective, tribal libraries often are unique because:

- In addition to public access materials, collections may include sacred materials to which culturally appropriate access must be assured.

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<sup>4</sup> Heyser, R. and L. Smith (1980) *Public Library Service to Native Americans in Canada and the Continental United States*. Library Trends, 29(2), 353-368.

- Staff members are often viewed as knowledgeable “culture keepers” who may have limited experience or professional training in traditional library sciences.
- Locations may be in remote areas where access to training and resources, including internet access, are not readily available.
- They are responsible for addressing diverse tribal needs not traditionally associated with public libraries, including language and life ways preservation.
- They serve large and geographically diverse areas, often as large as some states.

Of concern to tribal citizens and people knowledgeable about the unique role of tribal libraries, many policy-making agencies are dismissive of tribal libraries and do not recognize auxiliary or branch libraries, resulting in only one library per tribal nation being eligible to seek funding or services. The digital inclusion needs of tribal citizens would be better served if key stakeholder organizations such as the Universal Service Administrative Company recognized the essential role of tribal libraries as community anchor institutions, understood the profound needs of tribal populations, and grasped the complex geography of many tribal lands.

#### **4. Key Challenges**

##### **a. LSTA Eligibility Requirement**

Current E-rate rules dictate that “libraries must be eligible for Library Services Act (LSTA) assistance in its state.” This requirement excludes the majority of tribal libraries because they are departments of sovereign nations and are prohibited by many state laws from receiving services from state agencies. New Mexico and a few other states have mandated services to tribal libraries, but this is the exception and not the norm. Further, some tribal libraries do not meet the statutory definition of a library as defined by the 1996 Library Services and Technology Act (Pub. L. 104-208) (LSTA).

Even though the 1984 Library Services and Construction Act (LSCA), the precursor to LSTA, recognized that “Indian tribes and reservations are generally considered to be separate nations and seldom are eligible for direct library allocations from states”<sup>5</sup> and recognized tribal needs are not adequately addressed by the conventional approach to library funding, the FCC continues to require that tribal libraries adhere to the LSTA eligibility requirement. As articulated by the Government Accounting Office (GAO) in its 2006 report, *Telecommunications: Challenges for Assessing and Improving Telecommunications for Native Americans on Tribal Lands*, “to be eligible for E-rate funds, a tribal library must be eligible for state LSTA funds and not just tribal LSTA funds.” This places state library administrative agencies in the position of acting on behalf of a sovereign tribe and may also place them in violation of state statutes. It is not a workable solution for state library agencies or tribal libraries.

Even if sovereignty and state law were not issues, tribal libraries do not meet the eligibility requirements for accessing LSTA funds managed by state library agencies. While rules vary by

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<sup>5</sup> 1984 Library Services and Construction Act (LSCA)

state, some of the more universal rules that exclude tribal libraries from participating in E-rate are listed below:

Rule: “The library has a completed “Library Annual Statistical Report” for the preceding fiscal year accepted by, and on file at, the State Library Agency.” Reality: State library agencies, which are responsible for collecting information and submitting it to a national database that publishes a report on public library statistics each year, do not collect information from tribal libraries. Public library data has been collected since 1988, but state library agencies are not required to include tribal libraries, which essentially relegates them to “ghost” status. Because statistical information is not available in the national database, tribal library needs are never considered by journalists, the public, and policymakers at the federal, state, and local levels when planning and evaluating programs and establishing policies.

Rule: “Libraries must be headed by a librarian who completed a library education program accredited by the American Library Association.” Reality: According to the 2011 ATALM study, only 30% of tribal libraries have a library director with an advanced library degree. This can be attributed to the fact that many tribal governments view their library staff as “culture keepers” and place a greater value on cultural knowledge than library science. Most tribal libraries are staffed by people who have knowledge of basic library operations, but do not necessarily hold the advanced degree required by some state library agencies.

Rule: “Libraries must have a dedicated facility.” Reality: In many tribal communities, libraries are incorporated into council houses, schools, tribal government complexes, and other facilities that serve community needs. They are not always dedicated, stand-alone facilities but are located in areas that are most accessible to tribal citizens.

Rule: “The library is, or is part of, a non-profit institution or agency that receives substantial support from public tax revenues.” Reality: Tribal libraries do not receive support from public tax revenues, i.e., property taxes.

Rule: “The library loans its materials to other libraries without charge.” Reality: Because they are not a part of state library networks or systems, tribal libraries are not eligible to participate in interlibrary loan programs and, therefore, cannot loan materials to other libraries. Further, because of severe underfunding (less than \$3 per capita per year, as compared to an average of \$45 for public libraries<sup>6</sup>), they often do not have extensive collections.

Rule: “The library offers computer access, including Internet access, for its clientele, and has a policy that addresses acceptable use.” Reality: While over 70% of tribal libraries offer these services, the other 30% simply do not have the infrastructure or budget to do so. This is a Catch-22 when it comes to E-rate.

These are just a few of the rules that prohibit tribal libraries from consideration for state-controlled LSTA rates. The list is not intended to be all-inclusive but to simply provide insights into existing barriers.

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<sup>6</sup> <http://www.educationbug.org/a/public-library-funding.html> (Accessed 10/29/2013)

ATALM recognizes that it is not within the scope of the FCC to address LSTA and state laws regarding the recognition of tribal libraries, but it is within the scope of the FCC to remove the requirement that tribal libraries be eligible for LSTA funds under state programs.

**b. Approval of Technology Plans.**

The requirement that tribal libraries must seek approval of technology plans from a state library agency creates an additional barrier, as most state library agencies are prohibited by state statutes from providing services to non-state entities.

**c. Exclusion of Tribal Library Representatives from the Policy Making Process.**

When the chairman of the FCC called for a Digital Literacy Corps to “enable thousands more public libraries to hold in-person, basic digital literacy classes and allow schools to do the same after school hours,” no mention was made of including tribal libraries or of the needs of American Indians. Further, when members of the Broadband Opportunity Coalition were named, no American Indian organizations were included. Organizations included were the Asian American Justice Center, National Council of La Raza (NCLR), League of United Latin American Citizens (LULAC), National Urban League, One Economy, National Association for the Advancement of Colored People (NAACP), The Joint Center for Political and Economic Studies, and the Minority and Media Telecommunications Council (MMTC).

**d. Lack of Awareness of the E-rate Program and its Benefits to Tribal Libraries and Their Patrons.**

As noted earlier, 52% of respondents to the 2011 ATALM survey were unaware of the E-rate program. Those who did know about it indicated a desire for more information and training in how to develop technology plans, submit applications, and comply with regulations. ATALM can deliver these services at its annual conference and through its website or lend its support to USAC if it wishes to host training.

**5. Conclusion**

Once the issues of eligibility are addressed, ATALM asks the FCC to accelerate deployment of high-capacity broadband to tribal libraries so they can better serve tribal citizens of all ages. ATALM pledges its support and willingness to work with the Office of Native Affairs and Policy, USAC, and the FCC to meet the challenges of bringing freely accessible broadband to Indian Country.

To disregard Native communities’ needs and the role of tribal libraries in providing core digital inclusion services is to condemn indigenous populations to falling even farther behind mainstream America in terms of digital access, adoption, and applications. It is imperative that tribal libraries and the communities they serve be heard.

## **RESPECTFULLY SUBMITTED,**

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ON BEHALF OF THE:

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